

HIGH COUR OF UTTARANCHAL AT NAINITAL

First Appeal No. 535 of 2001

(Old No. 9 of 1990

U.P. Awas Evam Vikas Parishad Appellant

Versus

Amar Nath Bhatia Respondent

First Appeal No. 189 of 2001

U.P. Awas Evam Vikas Parishad Appellant

Versus

Smt. Raj Bhardwaj & another Respondents

First Appeal No. 188 of 2001

U.P. Awas Evam Vikas Parishad Appellant

Versus

Mrs. R.L. Richards & anothe Respondents

First Appeal No. 187 of 2001

U.P. Awas Evam Vikas Parishad Appellant

Versus

Major Gopal Dutt Khanduri & others
Respondents

Sri K.S. Mehta, Advocate for the Appellant.
Sri Arvind Vashisht, Advocate for the respondents.

Dated: 9th August 2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present appeals have been filed against the judgment and decree dated 31.3.1989 passed by the III Additional District Judge, Dehradun.

Briefly stated the facts giving rise to the present appeals are that the State of U.P. acquired land in village Kakhan Tehsil and District Dehradun for U.P. Awas Evam Vikash Parishad for construction of housing scheme namely Raupur Road Bhumi Vikas Evam Grihsthan Yojna-1, Dehradun. A notification under section 28 of U.P. Awas Evam Vikash Parishad Act was made on 15.7.1972 and notification under section 32 of U.P. Awas Vikash Parishad Act was made on 12.12.1978. Land of Khasra no. 120 area 0.28 Acres and Khasra no. 121 area 0.41 was acquired and possession was taken on 28.1.1981. The Land Acquisition Officer passed an award on 23.5.1985 granting compensation at the rate of Rs.42,510.59 per acres with 30% solatium vide its order dated 23.3.1985. The claimants were not satisfied by the award passed by the Land Acquisition Officer and made reference to the District Judge, Dehradun Objection was filed by the appellant.

The IIIrd Additional District Judge, Dehradun allowed the reference and enhanced the compensation from 42,510.59 to Rs. 1, 15,937.97 per acre.

Feeling aggrieved the present appeal has been filed by U.P. Avas Evam Vikash Parishad, inter alia on the grounds that the acquired land is agriculture land, therefore, its market value cannot be determined as Abadi side. The area where the land was acquired is not fully developed and as such 1/3 of the land will be deducted for the road, drainage and other amenities and a deduction of 25% is to be made on the ground of largeness of the blocks.

The learned reference Court has framed as many as three issues and held that the claimants are entitled to get compensation of Rs.1, 15,937.97 along with 30% solecism and interest @ 9% per annum.

The counsel for the appellant has submitted that the acquired land is Sankara Doyam Khaki and as such the compensation assessed by the Land Acquisition Officer was justified.

The Land Acquisition Officer has assessed the compensation on the basis of typography of the land in question. Separate circle rates are fixed for different type of land

The rates shown in the order of Land Acquisition Officer are as under:

Type of land	Circle rates	Area	Rate per Acre	Compen-sation
Goyand 2 Khaki	6.00	1.30	1,15,937.97	1,50,719.36
Sakara 1 Khaki	2.60	20.76	50,239.79	10,42,978.04
Sakara 2	2.20	0.36	42,510.59	15,303.81

Khaki				
		22.42		12,09,001.21

All the land has been acquired by a common notification. The land has been acquired for construction of the residential houses, therefore, its valuation ought not to have been done on the basis of its typographic condition which was fixed keeping in view of its utility for purpose of agriculture purpose. No oral evidence has been adduced by the claimant and had orally submitted before the reference Court that the rate fixed for Goyand Doyam Khaki by the Land Acquisition Officer should have been given to him. The land in question is situated at Rajpur Raod, Dehradun. Dehradun City is growing with a fast speed and constructions of buildings is being made in the area of Rajpur Road. Therefore, the market value of the land is question is much higher than any other land being used for agriculture purpose.

In the case Gulzara Singh and others vs. State of Punjab and others (1993) 4 SCC 245, the Apex Court has held that if the land is acquired for construction of Mandi Township belting and fixation of differential rates of value is not justified. The observation is quoted below:

“In Administration General of W.B. case (1977) 1 SCC 330 this Court upheld rejection of the small plots of lands and accepted two sale deeds of large extent working out the average rate at Rs.500 per Decimal and ultimately the reference court fixed the market value at the rate of Rs.200 per decimal. It is, therefore, clear that the court in the first instance has to determine as to which of the sale deeds are relevant, proximate in point of time and offer comparable base

to determine market value. Thereafter the average price has to be worked out. It would be seen that this Court has taken a consistent view of working out average and further deductions have been made in fixing just and fair market value when large chunk of the land was acquired. We respectfully agree and adhere to the principle and we find no compelling reason to divert the stream or arrest the consistence.

6. Thus we have the evidence that the lands are possessed of potential value for being used for building purposes. In fact the acquisition itself is for construction of Mandi Township. The principle of belting is perfectly legal and unexceptionable as the lands abutting the main road up to a specified depth, depending on factual material on record, would fetch higher market rate than the lands situated in interior area. However, on facts of this case the belting is not warranted for the reason that as seen on three sides there exist roads and abutting the village. As per the plan as found by the High Court there exists a road cutting across the acquired lands. Therefore, there is not only access on three sides but also to interior lands. Thus in our view belting and fixation of differential rates of value is not justified.”

Therefore, the reference court has rightly awarded compensation to the claimant treating the entire land as one unit as Goyand Doyam Khaki land and in view of the observation of the Apex court mentioned above no interference is required in appeal in the findings arrived at by the reference Court. .

So far as rate of solatium and interest are concerned the reference Court has confirmed the rate awarded by the Land

Acquisition Officer and the same has not been challenged by either of the parties in the appeal.

In view of the aforesaid facts, in my opinion the reference Court has rightly assessed the compensation to the claimants for Rs.1,15,937.97 along with solatium of 30% and interest @ 9% per annum. I find no infirmity or illegality in the orders passed by the reference Court. The appeals lack merit and are hereby dismissed with costs.

(Rajesh Tandon J.)

9.8.2004

*Dhyani